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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MARC I. ROSENTHAL, Plaintiff and Appellant, v. CITIBANK N.A. et al., Defendants and Respondents.	B263465 (Los Angeles County Super. Ct. No. SC123075)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa Hart Cole, Judge. Affirmed.

Joseph La Costa for Plaintiff and Appellant.

Bryan Cave, Glenn J. Plattner and Richard P. Steelman Jr. for Defendants and Respondents.

INTRODUCTION

Marc Rosenthal defaulted on a loan and lost his home to foreclosure. Citibank, N.A., as Trustee for the Certificateholders of Structured Asset Management II, Inc., was not the original lender, but acquired an interest in the deed of trust on the property. Rosenthal does not dispute that he defaulted on the loan, but he challenges the foreclosure claiming Citibank did not have a valid interest in his property. His complaint rests on the allegation that, because the assignment of the deed of trust to Citibank was void, Citibank was not his true creditor. After Rosenthal made several attempts to state his claims, the trial court sustained Citibank's demurrer to Rosenthal's complaint without leave to amend. We affirm the resulting judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Foreclosure*

On December 22, 2006 Rosenthal obtained an $820,000 loan evidenced by a promissory note secured by a deed of trust on real property in Los Angeles. The deed of trust was recorded on December 29, 2006. The deed of trust states that the lender was PPI Equities, Inc., the trustee was Alliance Title, and the beneficiary, as nominee for the lender, was Mortgage Electronic Registration Systems, Inc. (MERS).[1]

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[1] "'MERS is a private corporation that administers a national registry of real estate debt interest transactions. Members of the MERS System assign limited interests in the real property to MERS, which is listed as a grantee in the official records of local governments, but the members retain the promissory notes and

The deed of trust gave MERS the ability to assign its interest to another party and to appoint a successor trustee. In the paragraph entitled, "Transfer of Rights in the Property," the deed of trust states that "[t]he beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. . . . Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument." In a paragraph entitled, "Sale of Note; Change of Loan Servicer," the deed of trust states, "The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to borrower." The deed of trust also granted the trustee the power to execute a notice of default and a notice of trustee's sale, and to conduct a non-judicial foreclosure in the event of default.

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mortgage servicing rights. The notes may thereafter be transferred among members without requiring recordation in the public records. . . . Ordinarily, the owner of a promissory note secured by a deed of trust is designated as the beneficiary of the deed of trust. . . . Under the MERS System, however, MERS is designated as the beneficiary in deeds of trust, acting as "nominee" for the lender, and granted the authority to exercise legal rights of the lender.'" (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 816, fn. 6.)

On November 17, 2010 MERS, in its capacity as beneficiary under the deed of trust and as nominee for the original lender, assigned its interest to Citibank. On December 23, 2010 Citibank substituted Old Republic Default Management Services as the trustee. Both the assignment of the beneficial interest to Citibank and the Substitution of Trustee substituting Old Republic as trustee were recorded on January 4, 2011. Old Republic, acting as the agent for the beneficiary, had previously recorded a Notice of Default and Election to Sell Under Deed of Trust on September 24, 2010. The Notice of Default stated the amount due on the loan was $31,659.88 and included a declaration stating that a representative had contacted the borrower to discuss options to avoid foreclosure in accordance with Civil Code section 2923.5. On January 6, 2012 Old Republic recorded a Notice of Trustee's Sale and the property sold on January 26, 2012.

At some point, the deed of trust had been transferred to the Certificateholders of Structured Asset Management Investments II, Inc., Bears Stearns Alt-A Trust, Mortgage Pass-Through Certificates, Series 2007-3 (the Bear Stearns Trust), a securitized trust governed by New York law.[2] Rosenthal alleges that the

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[2] "The mortgage securitization process has been concisely described as follows: 'To raise funds for new mortgages, a mortgage lender sells pools of mortgages into trusts created to receive the stream of interest and principal payments from the mortgage borrowers. The right to receive trust income is parceled into certificates and sold to investors, called certificateholders. The trustee hires a mortgage servicer to administer the mortgages by enforcing the mortgage terms and administering the payments. The terms of the securitization trusts as well as the rights, duties, and obligations of the trustee,

pooling and servicing agreement governing the Bear Stearns Trust required that the transfer of the deed of trust occur by an April 30, 2007 closing date. Rosenthal alleges that, because there was no "timely and complete assignment and/or sale to the [Bear Stearns Trust]," Citibank did not acquire any interest in the deed of trust. The validity of the transfer of Rosenthal's deed of trust into the securitized trust is the primary issue in this appeal.

B. *Rosenthal's Two Lawsuits*

Rosenthal filed an action in April 2013 challenging the foreclosure. Citibank demurred. Before the hearing on the demurrer, Rosenthal filed an amended complaint. Citibank demurred again. Just before the hearing on the demurrer to the amended complaint, Rosenthal voluntarily dismissed that action.

Two days later, on September 5, 2014, Rosenthal filed this action. Rosenthal asserted eight causes of action: intentional interference with contractual relations, declaratory relief, negligence, "quasi contract," violation of Business and Professions Code section 17200 et seq., accounting, wrongful foreclosure, and quiet title. Citibank filed a demurrer on November 26, 2014, but could not obtain a hearing until February 13, 2015. Despite the fact that Citibank had filed and served its demurrer, Rosenthal on December 8, 2014 filed a request for entry of default against Citibank. The court clerk entered the default the same day.

On February 13, 2015 the trial court vacated the entry of default, continued the hearing on the demurrer, and ordered Rosenthal to file a substantive opposition to the demurrer. The

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seller, and servicer are set forth in a Pooling and Servicing Agreement ("PSA")." (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 930, fn. 5.)

court vacated the default because Citibank had filed a demurrer prior to the clerk's entry of default.

C. *The Trial Court's Ruling on Citibank's Demurrer*

On March 4, 2015 the trial court granted Citibank's request for judicial notice of the loan documents and sustained Citibank's demurrer without leave to amend.[3] The court stated: "[Rosenthal] 'does not dispute that he owes money on his mortgage obligation.' [Citation.] [Rosenthal] therefore admits that he is in default on the loan, which would trigger the right to foreclose. [Rosenthal's] only bone of contention is whether [Citibank] has the right to foreclose. [Rosenthal] goes so far as to admit that [Citibank's] claim of right is based on an assignment executed on 11/17/10 but asserts that it is false, because it was executed after the transfer of the note to [the Bear Stearns Trust]. [Rosenthal] argues that the improper securitization of the note and deed of trust renders Citibank a third party to the loan and [deed of trust] without any right or authority to foreclose."

The court recognized a split of authority in California at the time on the question whether a borrower has standing to challenge a foreclosure based on deficiencies in the assignment

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[3] Citibank asked the court to take judicial notice of the December 22, 2006 Deed of Trust, the September 24, 2010 Notice of Default, the November 17, 2010 Assignment of the Deed of Trust to Citibank, the January 4, 2011 Substitution of Trustee, the January 6, 2012 Notice of Trustee's Sale, and the January 31, 2012 Trustee's Deed upon Sale. Rosenthal did not oppose the request, nor did he dispute the authenticity of the documents. Rosenthal does not argue that the trial court erred in granting Citibank's request to take judicial notice of these documents.

between the lender and subsequent assignees. The court relied on *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497 (*Jenkins*),[4] which held that the borrower, as an unrelated third party to the securitization and subsequent transfers of the beneficial interest under the promissory note, lacked standing to enforce the investment trust's pooling and servicing agreement. (*Jenkins*, at p. 514.) The trial court explained: "'Because a promissory note is a negotiable instrument, a borrower must anticipate it can and might be transferred to another creditor. As to plaintiff, an assignment merely substituted one creditor for another, without changing her obligations under the note. [*Jenkins*, *supra*, at p. 515].' As a corollary, a borrower who is admittedly in default cannot demonstrate prejudice due to the wrong party foreclosing, unless he or she can demonstrate that the true holder of the deed of trust would not have foreclosed based on the circumstances or that he or she will be at risk of claims by the true interest holder. Given that [Rosenthal] is admitting default and does not attribute his default on the loan to any flaws in the assignment, *Jenkins* is the better position here."

The trial court also discussed the minority view set forth in *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079 (*Glaski*), and concluded that Rosenthal did not fall within the *Glaski* court's narrow exception that allowed a borrower to challenge a void assignment. The trial court ruled: "*Glaski* examined the right of a borrower to challenge the validity of assignments of his debt and focused on whether the borrower was challenging an assignment based on a defect that rendered the assignments

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[4] The Supreme Court disapproved *Jenkins* in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939, fn. 13.

void, as opposed to voidable. [Citation.] If the borrower's challenge is based on a defect rendering the assignment void, then the borrower may assert it despite being a non-party. If the borrower's challenge is based on a defect rendering the assignment voidable, the borrower may not assert that challenge."

The court ruled that, "[e]ven under *Glaski*, [Rosenthal] fails to allege a void assignment. [Rosenthal] claims the assignment never happened [citation] or that the formalities required to effectuate the assignment were never adhered to [citation]. The fact of the assignment is established by . . . the judicially noticeable Assignment of Deed of Trust. . . . The mere fact that certain formalities were not followed also does not establish that the assignment was void, as opposed to voidable." The court sustained Citibank's demurrer without leave to amend and entered judgment in favor of Citibank and against Rosenthal. Rosenthal timely appealed.

D. *Subsequent Proceedings*

On February 18, 2016 a different court granted Citibank's motion for summary judgment in Citibank's unlawful detainer action against Rosenthal. On February 29, 2016 Rosenthal petitioned this court for a writ of supersedeas to stay his eviction pending resolution of this appeal, based on the California Supreme Court's decision in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919 (*Yvanova*). We denied the petition.

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion in Setting Aside the Default*

Rosenthal argues that the trial court erred by setting aside the entry of default against Citibank because Citibank did not make a motion to set aside the entry of default. Rosenthal contends that the trial court did not have the authority to vacate the entry of default on its own motion.

"The clerk is not authorized to enter a default for failure to file an answer when such answer is on file at the time such default is attempted to be entered. . . . In such a case the court may set aside the judgment of its own motion at any time . . . ." (*Reher v. Reed* (1913) 166 Cal. 525, 528.) "If the clerk enters such a judgment without such authority the judgment is void. . . . Such a judgment may be vacated upon motion or may be set aside by the court on its own motion." (*Montgomery v. Norman* (1953) 120 Cal.App.2d 855, 858; see *Bae v. T.D. Service Company* (2016) 245 Cal.App.4th 89, 99, fn. 7 ["[w]hen a clerk manifestly acts beyond his or her statutorily-conferred powers in entering a default, that action is void, as is any default judgment predicated on it"]; *Bristol Convalescent Hospital v. Stone* (1968) 258 Cal.App.2d 848, 862 ["[i]f the clerk's mechanical computation of the time elapsed since service was completed is in error and he should enter a default prematurely, a judgment based upon such default is void" and "may be set aside by the court at any time, and regardless of how the matter comes to the court's attention"].)

Rosenthal filed a request for entry of default against Citibank even though Citibank had filed a demurrer. The clerk

had no authority to enter the default. (See *Barragan v. Banco BCH* (1986) 188 Cal.App.3d 283, 297 [where the defendant files a demurrer, the "plaintiff may not obtain entry of default by action of the clerk"]; *Stevens v. Torregano* (1961) 192 Cal.App.2d 105, 112 [default entered after the defendant had filed a demurrer was void].) Because the default was void, the court had the authority to vacate it on its own motion.

B. *The Trial Court Properly Sustained Citibank's Demurrer*

"'On appeal from a judgment of dismissal entered after a demurrer has been sustained, this court reviews the complaint de novo to determine whether it states a cause of action. [Citation.] We assume the truth of all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.' [Citation.] We may consider matters that are properly judicially noticed." (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 813 (*Saterbak*).) "'We will affirm if there is any ground on which the demurrer can properly be sustained, whether or not the trial court relied on proper grounds or the defendant asserted a proper ground in the trial court proceedings.'" (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1491; *Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031.)

"'If the trial court has sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could cure the defect, we conclude that the trial court abused its

discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect.'" (*Saterbak, supra,* 245 Cal.App.4th at p. 813; see *Yvanova, supra,* 62 Cal.4th at p. 924.) "'[O]n appeal, a plaintiff "must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." [Citation.] The assertion of an abstract right to amend does not satisfy this burden. [Citation.] The plaintiff must clearly and specifically set forth the "applicable substantive law" [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary.'" (*Rossberg v. Bank of America, N.A., supra,* 219 Cal.App.4th at p. 1491.)

The trial court did not rule on Citibank's demurrer to each of Rosenthal's eight causes of action. Instead, the court ruled that Rosenthal's "entire complaint is based on the assertion that [Citibank] did not have any right or standing to foreclose on [his] home." Rosenthal concedes that all eight of his causes of action "flowed from the basic argument that [Citibank] lacked standing to pursue the nonjudicial foreclosure of [Rosenthal's] family home." Thus, Rosenthal's causes of action for declaratory relief, negligence, quasi-contract, violation of Business and Professions Code section 17200 et seq., and quiet title all stand or fall on the allegation that Citibank did not have the right to foreclose on his property. Because Rosenthal's complaint fails to state facts showing that Citibank did not have the right to foreclose, they all

fall. Rosenthal's cause of action for intentional inference with contractual relations fails for independent reasons.

1. *Rosenthal Failed To State a Claim for Wrongful Foreclosure*

Rosenthal argues that, because MERS either never transferred his deed of trust to the Bear Stearns Trust or did so after the closing date of that trust, the assignment to Citibank was void. Rosenthal contends that therefore Citibank had no legal right to foreclose on his property.

A beneficiary or trustee under a deed of trust who conducts an illegal, fraudulent, or willfully oppressive sale of property may be liable to the borrower for wrongful foreclosure. (*Yvanova, supra,* 62 Cal.4th at p. 929; see *Chavez v. Indymac Mortgage Services* (2013) 219 Cal.App.4th 1052, 1062.) A foreclosure initiated by one with no authority to do so is wrongful for purposes of such an action. (*Yvanova,* at p. 929.) Only the original beneficiary, its assignee, or the agent of either of them has the authority to instruct the trustee to initiate and complete a nonjudicial foreclosure sale. (*Ibid.*)[5]

When a borrower asserts that an assignment was ineffective, a question often arises about the borrower's standing to challenge the assignment—a transaction to which the

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[5] The elements of a claim for wrongful foreclosure are (1) the defendants caused an illegal, fraudulent, or willfully oppressive sale of the property pursuant to a deed of trust; (2) the plaintiff suffered prejudice or harm; and (3) the plaintiff tendered the amount of the secured indebtedness or was excused from tendering. (*Chavez v. Indymac Mortgage Services, supra*, 219 Cal.App.4th at p. 1062, citing *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 112.)

borrower is not a party. The California Supreme Court in *Yvanova, supra,* 62 Cal.4th 919 recently held that a borrower has standing to sue for wrongful foreclosure in such a situation, but only where an alleged defect in the assignment renders the assignment void rather than voidable. "Unlike a voidable transaction, a void one cannot be ratified or validated by the parties to it even if they so desire." (*Id.* at p. 936.) The Supreme Court in *Yvanova* disapproved *Jenkins* "to the extent [it] held borrowers lack standing to challenge an assignment of the deed of trust as void." (*Yvanova, supra*, 62 Cal.4th at p. 939, fn. 13.) The Supreme Court noted, however, that "*Jenkins*'s rule may hold as to claimed defects that would make the assignment merely voidable. . . ." (*Id.* at p. 939.)

Like Rosenthal, the plaintiff in *Yvanova* argued that the assignment of her deed of trust into a securitized trust was void because the assignment occurred after the trust's closing date, making the subsequent foreclosure wrongful. (*Yvanova, supra*, 62 Cal.4th at p. 925.) The Supreme Court in Y*vanova*, however, declined to address that argument: "We did not include in our order the question of whether a postclosing date transfer into a New York securitized trust is void or merely voidable, and . . . we express no opinion on the question here." (*Id.* at p. 931.) Instead, the Supreme Court remanded the case for reconsideration of whether the plaintiff could amend her complaint to state a cause of action for wrongful foreclosure.

Yhudai v. Impac Funding Corp. (2016) 1 Cal.App.5th 1252 and *Saterbak, supra,* 245 Cal.App.4th 808 considered the question the Supreme Court left open in *Yvanova.* The courts in those cases held that the late assignment of a deed of trust to a securitized trust is voidable, not void. (See *Yhudai,* at p. 1259;

Saterbak, at p. 815.) The facts in *Yhudai* and *Saterbak* were similar to those in this case. The deeds of trust in both cases named MERS as the beneficiary, as nominee for the lenders. (See *Yhudai*, at p. 1254; *Saterbak*, at p. 811.) The deeds of trust in both cases were sold to securitized investment trusts formed under New York law. (See *Yhudai,* at p. 1254; *Saterbak,* at p. 811.) In both cases MERS, as nominee for the lenders, executed and recorded assignments of the deeds of trust into the securitized trusts after the closing date of the trusts. (See *Yhudai,* at p. 1254; *Saterbak,* at p. 811.) The plaintiffs in both cases challenged foreclosures on the ground that MERS's untimely assignments of the deeds of trust into the securitized trusts were void. (See *Yhudai,* at p. 1254; *Saterbak,* at p. 811.) Both courts affirmed orders sustaining demurrers without leave to amend, concluding that the borrowers lacked standing to challenge assignments that were merely voidable. (See *Yhudai,* at p. 1259; *Saterbak,* at p. 815.)

We agree with *Yhudai* and *Saterbak* that a post-closing assignment of a loan to an investment trust renders the assignment voidable, not void. (See *Yhudai, supra*, 1 Cal.App.5th at p. 1259; *Saterbak, supra*, 245 Cal.App.4th at p. 817.) *Glaski, supra,* 218 Cal.App.4th 1079, on which Rosenthal exclusively relies, held that a defective assignment of a deed of trust into a securitized trust renders the assignment void. As *Yhudai* and *Saterbak* explained, courts have consistently rejected *Glaski*. (See *Yhudai,* at p. 1259; *Saterbak*, *supra*, at p. 815, fn. 5.) The court in *Glaski* relied on a then-recent unpublished decision by a New York trial court, *Wells Fargo Bank, N.A. v Erobobo* (N.Y.Sup.Ct. 2013) 972 N.Y.S.2d 147 [39 Misc.3d 1220(A)] (*Erobobo I*), which a New York appellate court has since reversed.

(See *Wells Fargo Bank, N.A. v. Erobobo* (N.Y.App.Div. 2015) 9 N.Y.S.3d 312 [127 A.D.3d 1176, 1178] (*Erobobo II*).) The New York appellate court held that a "mortgagor whose loan is owned by a trust, does not have standing to challenge the plaintiff's possession or status as assignee of the note and mortgage based on purported noncompliance with certain provisions of the [pooling and servicing agreement]." (*Erobobo II,* at p. 1178; see *Rajamin v. Deutsche Bank Nat. Trust Co.* (2d Cir. 2014) 757 F.3d 79, 90 [under New York law, assignments in contravention of [pooling and servicing agreements] are voidable at the trust beneficiary's election, not void *ab initio*].) Federal courts have uniformly rejected the reasoning of *Erobobo I.* (See *Yhudai*, at p. 1258 [collecting cases].)

Rosenthal's only claim is that the applicable pooling and servicing agreement required the deposit of his deed of trust into the Bear Stearns Trust by April 30, 2007, which Rosenthal alleges did not occur.[6] This defect, if true, makes the assignment voidable, not void. Therefore, Rosenthal lacks standing to challenge the foreclosure.

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[6] Rosenthal also alleges his deed of trust was *never* "properly and or actually endorsed, transferred, and or sold to [the Bear Stearns Trust], or any other claimed predecessor in interest to Citibank . . . ." The judicially noticeable Assignment of Deed of Trust, however, contradicts that assertion. (See *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20 ["a demurrer assumes the truth of the complaint's properly pleaded allegations, but not of . . . assertions contradicted by judicially noticeable facts"].)

2. *Rosenthal Failed To State a Claim for Intentional Interference With Contractual Relations*

To state a claim for intentional interference with contractual relations, a plaintiff must plead (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148; see *Popescu v. Apple Inc.* (2016) 1 Cal.App.5th 39, 51.)

Rosenthal alleges that Citibank acted improperly by interfering with his contractual relationship with "the original Lender," PPI Equities, and attempting to dispossess Rosenthal of his home. He does not allege facts showing that Citibank induced a breach of contract. Nor does he allege that Citibank actually disrupted Rosenthal's contractual relationship with PPI Equities resulting in any damage to him. (See *Woods v. Fox Broadcasting Sub., Inc.* (2005) 129 Cal.App.4th 344, 356 ["[a]n essential element of a contract interference claim is proof that the defendant's conduct actually disrupted or breached the plaintiff's contract"].) To the contrary, Rosenthal admits he was in default and thus in breach of his promissory note independent of any conduct by Citibank. The trial court properly sustained Citibank's demurrer to Rosenthal's cause of action for intentional interference with contractual relations.

C. *The Court Properly Denied Rosenthal Leave To Amend*

To meet the burden of showing he is entitled to leave to amend (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320; *Communities for a Better Environment v. Bay Area Air Quality Management District* (2016) 1 Cal.App.5th 715, 722), Rosenthal must "clearly and specifically" set forth the legal authority for the claims he contends he can allege, the elements of each of those claims, and the specific factual allegations that would establish each of those elements. (*Baldwin v. AAA Northern California, Nevada & Utah Insurance Exchange* (2016) 1 Cal.App.5th 545, 559; *Rossberg v. Bank of America, N.A., supra,* 219 Cal.App.4th at p. 1504.) It is not sufficient to assert "'an abstract right to amend.'" (*Rossberg*, at p. 1504.) Rosenthal has not met this burden. He states that Citibank would not suffer prejudice if the court allowed him to amend his complaint, but nowhere does he provide any specific facts or citation to legal authority that show how he would amend his complaint. The trial court did not abuse its discretion in sustaining the demurrer without leave to amend.

DISPOSITION

The judgment is affirmed. Citibank is to recover its costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.